



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title):

- **WAC 458-20-138, Personal services rendered to others**
- **WAC 458-20-224, Service and other business activities**

Date last reviewed: **October 18, 1999**

Reviewer: **Gilbert Brewer**

Date current review completed: **September 24, 2002**

Briefly explain the subject matter of the document(s):

Rule 138 defines the term "personal services" and describes the taxation of personal service business activity.

Rule 224 identifies the types of business activities that are taxable under the "service and other business activity" classification. It explains that any business activity that is not subject to a tax rate specified in statute is subject to tax under the service and other activity classification and gives numerous examples of such activities.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?



	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):



Appeals Division Decisions (WTDs):

Rule 138

- **Det. No. 98-112, 18 WTD 383 (1999) -- lease of durable medical equipment does not constitute provision of a "medical service"**

Rule 224

- **Det. No. 99-001, 18 WTD 420 (1999) -- architect's services were in the nature of professional services and did not directly relate to the physical activity of constructing itself, therefore, they were not services in respect to constructing activity**
- **Det. No. 98-194, 19 WTD 9 (2000) -- taxpayer's management services involved services traditionally provided by general contractors and directly related to constructing**
- **Det. No. 98-215, 19 WTD 26 (2000) -- taxpayer's construction consulting services did not constitute services in respect to constructing; he had no control or supervision over the construction project.**
- **Det. No. 99-109, 19 WTD 398 (2000) -- architectural review services provided to motel were not so directly related to constructing as to control or determine the nature of the actual construction.**
- **Det. No. 99-152, 19 WTD 643 (2000) -- construction management services provided to office tenants that are limited to review, inspection, advising, and acting as a facilitator do not constitute services in respect to constructing.**
- **Det. No. 99-346, 19 WTD 891 (2000) -- taxpayer's "construction management services" did not entail direction or management of the actual construction process and were subject to service, rather than retailing B&O tax.**
- **Det. No. 00-040, 19 WTD 957 (2000) -- taxpayer's "mailing services," in which he arranged for shipping of packages for his customers, constituted the provision of services and were not retail sales.**

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

5. Review Recommendation:

- | | |
|---------------|---|
| <u> X </u> | Amend |
| <u> </u> | Repeal/Cancel (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.) |
| <u> </u> | Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.) |
| <u> </u> | Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.) |



Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

I agree with the prior reviewer that Rules 138 and 224 should be combined into a single rule discussing the taxation of business activities under the service and other activities classification. Since many of the reported cases involve construction activities, the suggested cross-reference to Rule 170 also makes sense.

On the other hand, the prior reviewer suggested that the rule(s) should be amended to recognize the possible applicability of the former statutes authorizing different tax rates for certain, specified services. Since we are now more than four years beyond the repeal of those provisions, there is no longer any need to amend the rule to refer to the possibility of such a special rate applying to a service business.

Similarly, I do have concerns with the previous recommendation that the rule(s) should be amended to incorporate the "true object" test as applied in 15 WTD 019. The "true object" test is applicable to a broader range of activities than just the service and other activity classification. Therefore, I don't believe that it should be included in these rules or a consolidated rule.

6. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

- _____ 1
- _____ 2
- _____ 3
- _____ 4